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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

ORIGINAL

In the Matter of)
)
Performance Measurements and)
Reporting Requirements)
for Operations Support Systems,)
Interconnection, and Operator)
Services and Directory)
Assistance)

CC Docket No. 98-56
RM 9101

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

AT&T Comments

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Summary

The Notice correctly concludes that equal access to incumbent LECs' OSS and other support processes is essential before CLECs can bring effective competition to the local services marketplace. The issues highlighted in the Notice were brought to the Commission's attention over a year ago, but no ILEC has yet provided new entrants with parity access to its support systems and processes. In light of these facts, AT&T urges the Commission to modify its tentative conclusion to provide only non-binding guidelines on these critical issues. As shown in Part I below, the Commission has clear authority to issue binding national rules, and there is compelling need for such rules now. Such rules can build on the good work that has been begun in a handful of states and make sure that appropriate performance measurement processes are established nationwide as soon as possible.

Part II.A shows that the performance measurements identified in the Notice, which are largely based on the proposals of LCUG, provide an excellent start for national performance measurement rules. With a few additions, principally in the areas of billing accuracy and measurements for unbundled network elements, the performance measurements referenced in the Notice will meet CLECs' most basic needs.

Significant additional work is needed, however, to define the types of data disaggregation that are necessary to make effective comparisons between ILECs' performance for themselves and for CLECs. In particular, Part II.B shows that, in appropriate cases, additional disaggregation is necessary at the product, activity, volume/complexity and geographic levels to assure that an ILEC's performance for CLECs is in fact equivalent to the performance it provides for itself and its customers. Nearly all of the disaggregations AT&T suggests have been supported by one or more large ILECs, thus eliminating any serious issues of feasibility.

Part II.C describes the compelling need to assure that proper ILEC retail analogs are developed for the services, elements and capabilities ILECs provide to CLECs. The Commission has already held that ILEC analogs need not be perfect, but should be broadly construed. Thus, virtually all items a CLEC purchases from an ILEC have a reasonable analog in activities that the ILEC performs for itself and its end users. In the absence of compelling evidence, ILECs should not be heard to argue that there is no suitable way to compare ILEC and CLEC performance for a particular element or service purchased by CLECs.

Part II.D demonstrates that the disaggregations and analogs that AT&T suggests are readily available to ILECs

and thus should not be burdensome to collect. In particular, the Sprint local service entity has already supported the performance measurements and disaggregations suggested by LCUG. This indicates that even smaller tier 1 LECs have the information necessary to provide appropriate measurement data. Moreover, if ILEC analogs prove difficult to measure on an ongoing monthly basis, special studies could be conducted that would minimize the work for ILECs while maintaining the integrity of the measurement process. In all events, any ILEC claim of burden must be measured against the critical importance of having accurate and reliable performance data.

Part III describes a statistical methodology that can be used to measure an ILEC's performance and its compliance with Section 251. The methodology AT&T recommends is well-founded and supported by the affidavit of an eminent statistician with over four decades of experience. Adoption of this methodology will yield statistically valid results that account for both differences in average performance (mean) and variation in performance (variability) between ILECs and CLECs. In contrast, the statistical process control methodology recommended by BellSouth is not suited to measure parity and has already been rejected by regulators in two of its states.

Part IV provides recommendations on the types of monthly reports that ILECs should provide to regulators and to CLECs, and offers some sample reporting formats that could be implemented. Part V addresses other issues, including the need for audits and data retention. These items round out the processes that are needed to assure that the nondiscrimination mandate of Section 251 can be properly implemented.

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AT&T Comments

AT&T Corp. ("AT&T") submits the following comments on the Commission's Notice of Proposed Rulemaking released April 17, 1998 (FCC 98-72) ("Notice"). In the Notice, the Commission proposes model rules relating to incumbent local exchange carriers' ("ILECs'") performance pursuant to Section 251(c) of the Telecommunications Act of 1996 ("Act"). Specifically, the Notice proposes performance measurements and reporting requirements for operations support systems ("OSS"), interconnection, and operator services and directory assistance ("OS/DA").

Introduction

I. Procedural Background

Section 251(c) of the Act unambiguously requires ILECs to provide new entrants with nondiscriminatory and just and reasonable access to interconnection, unbundled network elements ("UNEs") and resale services. Over a year ago, LCI and CompTel brought to the Commission's attention the fact that ILECs were not providing competitive local exchange

carriers ("CLECs") with nondiscriminatory access to ILEC support systems and processes. Such access is not only a statutory mandate; it is essential if the local competition goals of the Act are ever to become a reality for consumers.¹

The LCI/CompTel Petition and the comments filed in response to that petition dramatically illustrated that, despite the clear language of the Act and the Commission's prior rulings, ILECs simply were not providing CLECs nondiscriminatory access to these vital systems and support processes, either electronic or human. This effectively sealed off the ILECs' local monopolies from competition and foreclosed CLECs from offering consumers a choice of local service providers.

In an effort to provide the Commission with information regarding CLECs' specific OSS needs, a group of CLECs representing several large interexchange carriers formed the Local Competition Users Group ("LCUG").² LCUG provided the Commission with a broad set of performance measurements and related material and it urged the Commission to use these

¹ Petition for Expedited Rulemaking by LCI International Corp. and competitive Telecommunications Association, CC Docket No. 96-98, RM 9101, filed May 30, 1997 ("LCI/CompTel Petition").

² LCUG members include AT&T, MCI, Sprint, LCI and WorldCom.

criteria to develop national rules to assure that Section 251(c)'s parity requirements are properly implemented. The most recent version of such measurements is LCUG's version 6.1.³ In negotiations, workshops and collaborative proceedings involving carriers and/or regulatory bodies, LCUG members have refined and provided additional specificity regarding necessary performance measurements. However, no ILEC has supplied yet CLECs with parity access to its support systems and processes.

II. The Notice

The Commission's Notice (§ 1) correctly states that, in order to achieve the pro-competitive goals of the Act, ILECs must establish OSS and support processes that support all three modes of CLEC entry described in Section 251(c). Critically, the Commission (id.) notes that "unlike many traditional wholesale/retail relationships," ILECs act as "both the [CLECs'] sole supplier and [their] biggest competitor." The Commission (§ 8) also recognizes that "[a]s the single supplier of wholesale facilities and services to competing carriers in the local market, incumbent carriers have no [market] incentive" to "provide quality service to their buyers," particularly "given the

³ Local Competition Users Group, Service Quality Measurements (SQM), Version 6.1, filed October 8, 1997.

fact that the purchasers of their wholesale offerings are also their retail competitors." Id., ¶ 2. This unique relationship is the principal reason Congress adopted the parity principle of Section 251(c).⁴

The Notice (¶ 9) properly concludes that nondiscriminatory access to ILEC OSS functions "rests on a fairly straightforward concept: efficient and effective communication between the retail service provider (i.e., the new competitor) and the wholesale provider (i.e., the incumbent carrier)." This, in turn, means that CLECs

"must be able to access the customer data necessary to sign up customers, place an order for services or facilities with the incumbent, track the progress of that order to completion, receive relevant billing information from the incumbent, and obtain prompt repair and maintenance for the elements and services it obtains from the incumbent" (id.).

The Commission (¶ 3) recognizes that ILECs rely extensively on OSS systems to provide services to their retail customers and that "[t]hese support functions are crucial to new entrants' ability to compete effectively in the market for local telephone service." However, actual experience has shown that "mandating nondiscriminatory

⁴ This relationship, and the inherent conflict of interests that it creates, has also been brought to the Commission's attention in a separate proceeding which proposes a structural solution to the conflict of interest problem. See LCI International Telecom Corp. Petition for Expedited Declaratory Ruling, CC Docket No. 98-5.

access . . . is not the same thing as achieving it in practice." Id., ¶ 13. Therefore, the Commission (¶ 3) seeks to define a methodology that would enable regulators and others "to analyze whether new providers of local telephone service are able to access, among other things, [ILEC] support functions . . . in a nondiscriminatory and just and reasonable manner."

The Commission (¶ 14) recognizes that there is currently a "gap in everyone's knowledge about how incumbent LECs' internal processes operate with respect to their own customers and the competing carriers." Thus (id.), it correctly concludes that

"[p]erformance measurements and reporting requirements should make much more transparent, or observable, the extent to which an incumbent LEC is providing nondiscriminatory access, because such requirements will permit direct comparisons between the incumbent's performance in serving its own retail customers and its performance in providing service to competing carriers."

CLECs responding to the LCI/CompTel Petition urged the Commission to adopt national rules adopting such requirements.⁵ However, the Notice declines to establish national requirements at this time. Instead, the Commission

⁵ Association for Local Telecommunications Services Comments, filed July 10, 1997, pp. 1-6; AT&T Comments, filed July 10, 1997, pp. 3-7; MCI Comments, filed July 10, 1997, pp. 4-9; AT&T Reply, filed July 30, 1997, pp. 13-15; Reply Comments of the Competition Policy Institute, filed July 30, 1997, pp. 4-10.

(¶ 4) states that it intends to "provide guidance" to state regulators and the industry on a series of performance measurements "that will help spur the development of local competition" through a set of "model performance measures and reporting requirements . . . that are not legally binding." The Commission (id.) notes, however, that the experience gained in developing such model rules and their application by states would "provide a more informed and comprehensive record upon which to decide whether to adopt national, legally binding rules." The remainder of the Notice proposes a series of performance measurements and methods for reporting and analyzing data on ILEC performance, all of which are intended to assure that ILECs comply with Section 251(c).

III. Proposed Actions

The Commission has unquestionable authority to issue binding national rules on the critical competitive issues discussed in the Notice. Although "guidance" to the States is helpful, adoption of minimum national binding rules -- which could be amplified by the States -- is a much more effective means of assuring that local markets are open to competition as quickly as possible. Moreover, adoption of national rules would be efficient and allow for the use of uniform measurement processes across states and regions.

Thus, AT&T urges the Commission to adopt binding national rules now.

In general, AT&T believes that the performance measurements and reporting requirements proposed in the Notice are an excellent starting point for identifying, collecting and analyzing the data needed to determine whether ILECs are complying with the Act. AT&T recommends below a number of enhancements to the proposed rules, especially in the areas of

- (i) establishing additional performance measurements for (a) billing accuracy and (b) ILEC activities pertinent to the needs of facilities-based CLECs;
- (ii) reporting dimensions for specific measurements;
- (iii) identifying appropriate ILEC product analogs for CLEC purchases of unbundled network elements ("UNEs");
- (iv) adopting statistical techniques to determine whether an ILEC's performance complies with its statutory nondiscrimination obligations; and
- (v) specifying report formats that present the results of the above analysis for different audiences.

As shown below, all of these recommendations will improve the ability to monitor ILECs' performance in these critical areas, and all can be implemented without imposing significant burdens on ILECs.

Argument

I. The Commission Should Use This Opportunity To Issue Binding National Rules.

The Commission clearly has the authority to issue binding national rules regarding ILECs' OSS performance. It should use that authority now to assure that CLECs will have an effective opportunity to enter local markets as soon as possible.

A. There Is No Legitimate Question That The Commission Has Authority To Issue Binding National OSS Rules.

Contrary to the claims of some ILECs, the Eighth Circuit's decision in Iowa Utilities Board v. FCC,⁶ does not affect the Commission's authority to establish the type of performance measurements and reporting requirements described in the Notice.⁷ As the Notice (¶ 14) states, these rules would establish measurement categories, methodologies, and reporting procedures that would be used to determine the quality of the OSS and OSS access ILECs

⁶ 120 F.3d 753 (Eighth Circuit, 1997).

⁷ See Notice, ¶ 25.

provide to CLECs and to themselves. Thus, they would be used to determine whether new entrants are receiving the nondiscriminatory performance that the Act explicitly requires.

Nothing in the Eighth Circuit's decision casts doubt on the Commission's authority to promulgate such rules. Indeed, that decision affirmed the Commission's regulations implementing the statutory nondiscrimination requirement for access to UNEs (including specifically OSS) and resale services. The proposed requirements are issued pursuant to the same authority and for the same purpose as those valid regulations. Indeed, the Notice (§ 27) expressly states that the proposed performance measurements "are intended to permit a direct assessment of whether an incumbent LEC is complying with its obligations under Section 251."

In Iowa Utilities Board, the ILECs advanced numerous challenges to the Commission's regulations implementing their duties to provide access to UNEs under Section 251(c)(3). The Eighth Circuit largely rejected those challenges and upheld the Commission's rules as a lawful exercise of its delegated authority. In particular, the Eighth Circuit upheld 47 C.F.R. § 51.319(f), which requires ILECs to provide "nondiscriminatory access" to "[o]perations support systems functions [which] consist of pre-ordering, ordering, provisioning, maintenance and repair, and billing

functions supported by an incumbent LEC's databases and information" (emphasis added). See Iowa Utilities Board, 120 F.3d at 808-810. The court also upheld 47 C.F.R. § 51.313(b-c), which requires ILECs to provide "a carrier purchasing access to unbundled network elements with the pre-ordering, provisioning, maintenance and repair, and billing functions of the incumbent LEC's operations support system" on "terms and conditions . . . no less favorable to the requesting carrier than the terms under which the incumbent LEC provides such elements to itself" (emphasis added). Thus, the Eighth Circuit upheld the regulations that mandate exactly what the Commission is proposing here -- parity access to incumbent LECs' OSS.

The Commission's authority in this area is also supported by the fact that the Eighth Circuit's decision affirms many other Commission regulations that implement the nondiscrimination principle of Section 251(c)(3). For example, the court affirmed the Commission's requirement that "[a]n incumbent LEC shall provide . . . nondiscriminatory access to network elements on an unbundled basis" 47 C.F.R. § 51.307(a) (emphasis added). It also approved the Commission's determination that "the quality of an unbundled network element, as well as the quality of the access to such unbundled network element, that an incumbent LEC provides to a requesting

telecommunications carrier shall be at least equal in quality to that which the incumbent LEC provides itself." 47 C.F.R. § 51.311(b) (emphasis added). See also 47 C.F.R. § 51.305(a)(3) (requiring interconnection "that is at a level of quality that is equal to that which the incumbent LEC provides itself"); id. § 51.305(a)(5) (requiring interconnection on "terms and conditions that are no less favorable than the terms and conditions the incumbent LEC provides interconnection to itself").⁸ The rules proposed in the Notice are designed to achieve exactly these ends.

The Eighth Circuit's treatment of the Commission's so-called "superior quality rules," 47 C.F.R. § 51.305(a)(4), 51.311(c), further confirms the Commission's power to implement the Act's OSS parity requirements. The court observed that although Section 251(c)(3) does not give the Commission authority to require "superior quality interconnection," it does empower the Commission to adopt regulations that require incumbent LECs to provide access to competitive LECs that is "equal" to their own. Iowa Utilities Board, 120 F.3d at 812-13. Further, the court

⁸ Although the Eighth Circuit did not address each of these rules individually, the incumbent LECs had asked the Court "to vacate the FCC's entire First Report and Order," Iowa Utilities Board, 120 F.3d at 819, and the Court instead "uph[e]ld all of the Commission's unbundling regulations except for rules 51.305(a)(4), 51.311(c), 51.315(c)-(f), and 51.317." Id. at 818 n.38.

expressly upheld the Commission's rules requiring ILECs to modify their facilities to the extent necessary to provide CLECs with equal access. Id. at 813 n.33.

Thus, the statutory basis for the Commission's authority in these areas is clear. The Eighth Circuit recognized that the Commission is "specifically authorized" to determine "what network elements should be made available for purposes of subsection [251](c)(3)" (see 47 U.S.C. § 251(d)(2); Iowa Utilities Board, 120 F.3d at 794 n.10, 802 n.23). It would make no sense if the Commission could not also adopt rules governing their functionalities.

The Eighth Circuit's decision also confirms the Commission's authority to adopt rules on nondiscriminatory OSS performance for resale services. The Court expressly upheld the Commission's authority under Section 251(c)(4)(B) to adopt rules that "define[] the overall scope of the incumbent LEC's resale obligations." Id. at 819. As the Commission explained in its Local Competition Order,⁹ its regulations requiring nondiscriminatory access to OSS were also adopted pursuant to that provision. See Local Competition Order ¶ 517 ("nondiscriminatory access to

⁹ Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, released August 8, 1996.

operations support systems" is a "term or condition of . . . resale under Section 251(c)(4)").

In sum, the Eighth Circuit reaffirmed the Commission's authority to adopt regulations implementing the requirement that ILECs provide new competitors with OSS and OSS access at a quality equal to that which the incumbent itself enjoys. Moreover, the Notice recognizes that processes to measure the current level of quality of ILECs' OSS for themselves and competitors are vital to ensuring such equal access. Indeed, without well-defined performance measurements, comparison methodologies, and reporting requirements, the Commission and other regulatory agencies will be simply unable to determine whether ILECs are fulfilling their statutory nondiscrimination obligations.

B. There Is Compelling Need For The Commission To Issue Binding National Rules Now.

The Commission (§ 14) recognizes that performance measurement and reporting requirements are critical to the development of effective local competition, because of "the current gap in everyone's knowledge" as to whether ILECs are complying with their nondiscrimination obligations. Although some States, including New York, Georgia, Texas, California, Michigan, Arizona and Nevada are doing a laudable job of beginning the process to develop appropriate

performance measurements, most states have not yet begun the process.¹⁰ Contrary to the fears expressed in the Notice (§ 26), adoption of national standards would not undermine the good work already done in those States; rather, AT&T urges the Commission to build on such work.

Further, although a consensus is beginning to develop around the performance measurements and reporting requirements proposed by LCUG, the States, and especially ILECs, are not unanimous in their support.¹¹ Moreover, in most states there has not been a substantial emphasis on ILEC services and elements provided to facilities-based CLECs, whose needs must also be considered in this context. Thus, the Commission should use this proceeding to adopt a comprehensive set of performance measurements that will

¹⁰ See Notice, § 4. A brief review of State proceedings that have made good progress is appended as Attachment A. Even in cases where substantial progress has been made, it has often taken enormous energy from the CLECs and state regulators to obtain the needed agreement from ILECs. For example, the New York PSC initiated its collaborative process to investigate carrier performance measurements in February, 1997. An interim order in that proceeding was not issued until March 16, 1998, and a final order is not expected until the first quarter of 1999.

¹¹ See, e.g., Application of The Southern New England Telephone Company's Proposed Service Standards and Financial Remedies for Resold Services and Unbundled Elements, Connecticut Docket 97-04-23, Brief of SNET, dated October 24, 1997, p. 14 ("the comparability measures proposed by the CLECs are extreme and unworkable. For example, the LCUG measures before the Department . . . include measures on pre-ordering.").

assure nondiscriminatory treatment for all CLECs, regardless of their chosen market entry strategy.

The Notice (§ 117) itself recognizes that uniform performance measurement design and reporting will benefit all interested parties by "bringing more consistency and predictability to the evaluation process." Doing so would enable ILEC activities to be measured across state and regional boundaries. A truly uniform approach, however, can only be developed if the Commission adopts national rules. Indeed, the Notice (§ 4) acknowledges that NARUC has requested additional direction from the Commission on these important matters. NARUC specifically asked the Commission to "develop performance categories and measurement methodologies for reporting purposes," i.e., exactly the items discussed in the Notice.¹² The Commission should heed this request.

¹² NARUC Convention Floor Resolution, No. 5, "Operations Support Systems Performance Standards" (adopted by the Exec. Committee on Nov. 11, 1997) ("NARUC Resolution"), p. 2. See also Comments of the People of the State of California and the Public Utilities Commission of the State of California on the LCI/CompTel Petition, filed July 9, 1997, p. 7; Comments of the Public Service Commission of Wisconsin on the LCI/CompTel Petition, filed July 10, 1997, p. 3. Performance Measurements for Telecommunications Interconnection, Unbundling and Resale, Docket No. 7892-U, ("GA PSC Order") Georgia Public Service Commission, Order, Record Submitted December 2, 1997, Date Decided December 30, 1997, at p. 14.

The Commission and its staff have devoted an enormous amount of effort and resource to these matters and have developed significant expertise that most states cannot afford to duplicate. Thus, it is important that national rules be developed sooner rather than later. If the Commission issues non-binding rules, waits for states to act, and then finds that they have been unable or unwilling to take all of the steps needed to support local competition, critical time will have been lost in the effort to achieve the Act's pro-competitive goals. In addition, the lack of national rules requires CLECs to litigate these issues in every state, increasing their costs and making additional demands on the limited resources of State commissions.

As with all of the Commission's other rules to implement local competition, national binding rules in this area would not preclude the States from making reasonable adaptations and additions necessary to accomplish state objectives.¹³ Nevertheless, development of national baselines for (i) defining performance measurements, (ii) developing appropriate retail analogs for services and elements ILECs provide to new entrants, and (iii) establishing uniform requirements for analyzing and

¹³ See NARUC Resolution, p. 2.

reporting data on ILEC performance are critically necessary to support local competition throughout the country. Therefore, AT&T urges the Commission to modify its tentative conclusion and to issue binding national rules on these critical issues now.

II. The Measurement Scheme Identified In The Notice Should Be Expanded And Clarified To Permit An Accurate Comparison Of ILECs' Performance For Themselves And For CLECs.

A complete and fully representative performance measurement and reporting system for ILECs must have several aspects. It must:

1. identify and unambiguously define the specific performance measurements that must be made for each of the five categories of OSS (pre-ordering, ordering, provisioning, maintenance and repair, and billing), as well as for interconnection, OS/DA and general network performance;
2. require that measurements be disaggregated for each significant grouping of ILEC elements, functionalities and services purchased by CLECs seeking to enter the local market;
3. identify additional appropriate measurement dimensions, including activity type, order size, and geography;
4. identify ILEC retail analogs for the products and services furnished to CLECs, so that appropriate parity measurements can be made;
5. provide a statistical methodology to determine whether the collected and reported data demonstrate that the ILEC has met its statutory nondiscrimination obligations;
6. establish standard reporting schedules and formats that can be applied across all carriers for which measurements must be made; and

7. adopt appropriate audit and data retention requirements to assure the validity of the reported ILEC data.

This Part of AT&T's comments discusses the first four items described above. The others are discussed in Parts III-V, respectively.

A. With A Few Important Additions, The Proposed Performance Measurements Are Sufficient.

The specific performance measurements identified in the Notice provide an excellent foundation for achieving the Commission's goals in this proceeding. The Commission's proposals are largely based on the measurements developed by LCUG. Moreover, nearly all of the proposed measurements have been acknowledged as reasonable and supported by the Department of Justice ("DOJ") and one or more RBOCs.

With a few important additions, AT&T believes that the proposed performance measurements will meet the Commission's goal (§ 32) to "provide an accurate assessment of the incumbent ILEC's overall performance . . . as a wholesale provider." AT&T also recognizes, however, that the measurements proposed by LCUG may not fully reflect the needs of facilities-based CLECs that principally require access to specific UNEs, especially loops, and who need collocation and other ILEC-provided capabilities in order to interconnect their networks with the ILEC. Therefore, AT&T urges the Commission to pay particular attention to the